Supreme Court, U. S.
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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1978
No. 78-119

STATE OF WASHINGTON, DEPARTMENT OF FISHERIES and DONALD W. MOOS, Its Director,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondents,

MAKAH TRIBE, LOWER ELWHA BAND OF CLALLAM TRIBE, PORT GAMBLE BAND OF CLALLAM TRIBE, SUQUAMISH TRIBE, LUMMI TRIBE, NOOKSACK TRIBE, and SWINOMISH INDIAN TRIBAL COMMUNITY,

Intervenors-Respondents.

STATE OF WASHINGTON, DEPARTMENT OF FISHERIES,

Petitioners,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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STATE PRINTING PLANT OLYMPIA, WASHINGTON

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The Petitioners, Washington State, Washington State Department of Fisheries and the director of that department in our Petition for Certiorari have requested this court to review the Ninth Circuit Court of Appeals decision in *U.S. v. Washington*, No. 75-2835,

76-1042 (referred to as "International Fishery Case" —Pet. App. A-29-33). While the Solicitor General on behalf of the United States has generally supported or acquiesced in the state's request for certiorari, he has however with reference to the "International Fishery Case" supported the position of the Ninth Circuit that the case is moot.

The State's Petition, pp. 28-35, demonstrates that those court orders are not moot as reflected by the regulations adopted by the Department of Interior in 25 C.F.S. 256(B) Federal Register Vol. 43 No. 122., Friday, June 23, 1978. The continuing effect of these decisions by the court with reference to the "International Fishery" are reflected by two letters from the International Pacific Salmon Fisheries Commission which we received after the filing of the State's Petition for Certiorari. Those letters addressed to the Acting Assistant Secretary of the United States Department and the Canadian Minister of Fisheries clearly express the continuing effect of the decrees for which review has been sought. (See, Appendix B-1 and 2 for the text of those letters).

We respectfully submit that the Petition for Certiorari including the International Fishery Case should be granted by this court.

Dated this 3rd day of October, 1978.

SLADE GORTON
Attorney General

EDWARD B. MACKIE
Deputy Attorney General
Attorneys for Petitioner

APPENDIX B-1

July 21, 1978

Mr. John D. Negroponte
Acting Assistant Secretary
Department of State
Bureau of Oceans and International
Environmental and Scientific Affairs
Washington, D.C. 20520

Dear Mr. Negroponte:

We wish to acknowldege your letter of June 5, 1978 concerning approval of the Commission's regulations for 1978 except as to the United States Indians exercising treaty fishing rights.

The Sockeye Salmon Convention, as ratified by His Majesty for Canada and by the President for the United States, does not provide for either High Contracting Party making exceptions for certain fishermen from the Commission's regulations, nor does it provide for separate "domestic" regulations or separate Indian Tribal regulations in Convention Waters. The Commission therefore objects to the actions of the United States authorities providing multiple regulatory authority in United States Convention Waters.

The basic objectives of the Convention cannot and will not be achieved when there are several regulatory agencies with only this Commission responsible for carrying out the provisions of the Convention. Since this practice has started in the United States

there have been examples of detrimental effects on the management of the salmon stocks concerned, and there seems little likelihood of anything but negative effects in the future. This is a deplorable situation which will be detrimental to the intrests of all fishermen who fish for Fraser River sockeye and pink salmon in both countries.

Yours very truly,

INTERNATIONAL PACIFIC
SALMON FISHERIES
COMMISSION

W. R. Hourston
Chairman

APPENDIX B-2

July 21, 1978

The Honorable Romeo LeBlanc, P.C.M.P.
Minister of Fisheries and the Environment
House of Commons
Ottawa, Canada K1A OH3

Dear Mr. LeBlanc:

Enclosed for your information is a copy of letter sent to Mr. Negroponte of the United States Department of State concerning this Commission's regulations for 1978.

The Commission is very much concerned with the United States Government action in excepting Indians from the Commission regulations and in setting "domestic" regulations for Indians, and the actions of the Federal Court in approving separate Indian Tribal regulations as well, all of which are not in accordance with the provisions of the Sockeye Salmon Convention. The objectives of the Convention are being jeopardized by the multiplicity of regulatory agencies, of which only this Commissions is responsible for carrying out the provisions of the Convention. It is difficult to understand how either High Contracting Party to the Convention can allow these actions, which are contrary to the provisions of the Convention as approved by His Majesty and the President. The ability of the Commission to fulfill its responsibilities under the Convention is being impaired, and the Commission urges that the Canadian Govern-

ment make the strongest possible objection to the United States Government.

Yours very truly,

INTERNATIONAL PACIFIC
SALMON FISHERIES
COMMISSION

W. R. Hourston
Chairman